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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1943

HAROLD CHRISTOFFEL and ALLIS-CHALMERS WORKERS UNION, Local No. 248, UNITED AUTOMOBILE WORKERS OF AMERICA, CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Petitioners,

vs.

THE WISCONSIN EMPLOYMENT RELATIONS BOARD and NICHOLAS IMP and MICHAEL BOHACHEF,

Respondents.

No. 353

Petition for Writ of Certiorari to the Supreme Court of the State of Wisconsin and supporting Brief

A. W. RICHTER,
Attorney for Petitioners.

HAMMERSMITH-KORTMEYER CO. MILWAUKEE

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vs.

THE WISCONSIN EMPLOYMENT RELATIONS BOARD and NICHOLAS IMP and MICHAEL BOHACHEF,

Respondents.

No.

PETITION FOR WRIT OF CERTIORARI
to the Supreme Court of the State of Wisconsin

To the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Harold Christoffel and Allis-Chalmers Workers Union, Local 248, United Automobile Workers of America, Congress of Industrial Organizations, respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Wisconsin affirming a judgment of the Circuit Court of Milwaukee County, which had affirmed with some modifications an enforcement order and findings of the Wisconsin Employment Relations Board.

SUMMARY STATEMENT OF MATTERS INVOLVED

The proceeding was commenced before the Wisconsin Employment Relations Board by the filing of a complaint by respondents, Nicholas Imp and Michael Bohachef, charging petitioners with unfair labor practices under Section 111.06(2)(a)(b)(e)(f), Statutes of Wisconsin (Printed at the end hereof). A hearing was held by the Board which related in large part to the charge of the complainants that the strike vote of appellant union was illegal. The Board found this charge not to be established (R. 133, No. 15) and, therefore, the complaint as to subdivisions (e) and (f)(2) of Section 111.06 Wisconsin Statutes fell out of the case.

The board made detailed findings with reference to the charges under Section 111.06(2)(a) and (b) (R. 125).

It is undisputed that Local 248 had been since January, 1938 and was at the time of the proceeding the exclusive collective bargaining representative of all the production workers (with a few exceptions) of the Allis-Chalmers Manufacturing Company at its plant at West Allis, Wisconsin by virtue of action of National Labor Relations Board; that Allis-Chalmers Manufacturing Company is engaged in interstate commerce; that respondents, Imp and Bohachef, are production workers at the Allis-Chalmers plant and were formerly members of Local 248. The evidence is in dispute as to whether they were still members at the time of the occurrences found by the Board. They had discontinued paying dues in May, 1939. Members and officers of the union tried by continued and persistent argument and persuasion to induce them to pay up their dues by signing notes for the delinquent dues and continuing current payments. It is in connection with these efforts of the union and its mem-

bers to induce the individual respondents to restore themselves to good standing in the union that the matters which are the subject of most of the findings of the Board occurred.

Imp and Bohachef persistently refused to avail themselves of the offers to restore their good standing in the union and, it is claimed, developed hatred for the union and its officers and became disrupters.

On December 18, 1940 an incident took place which the union members involved claim to have been an attempt by Imp and Bohachef to run down and injure one of their members and which Imp and Bohachef claim was an attempt to assault them or intimidate them (R. 129, No. 9). A disorderly conduct charge against some of the union men who participated in the incident was dismissed by the police court of West Allis (R. 192).

After this incident the union demanded the discharge of Imp and Bohachef.

On January 22, 1941 the union called a strike against the Allis-Chalmers Manufacturing Company and made the discharge of Imp and Bohachef one of its strike demands. The strike was settled pursuant to an agreement arrived at between the company, the union and the National Defense Mediation Board (R. 105, Exhibit A).

Respondent Board made findings (R. 125) to the effect that it had been and was the policy of petitioners to compel all employees within the collective bargaining unit to become and remain in good standing (R. 127, No. 6); that to carry out such policy and to coerce and intimidate employees of Allis-Chalmers Company to cooperate with petitioners against their will, petitioners carried on a course of coercion and intimidation of respondents, Imp and Bohachef, to compel them to join the union and pay dues as the condition of retaining their employment; that

since September, 1940, union officers and members contacted Bohachef almost daily to have him pay his back dues and penalties to the union and to be reinstated in good standing and at many such contacts he was threatened by officers and members of the union with loss of his job and bodily injury if he failed to comply with their demands; that on one occasion a group of officers and members, in an attempt to intimidate Bohachef to become reinstated as a union member, prevented him from leaving the plant until 1:30 in the morning by ganging up around the gates and placing him in fear of bodily injury; that on December 18, 1940, a group of members, under the direction of certain officers, guarded each of the employee exit gates at the plant for the purpose of contacting Bohachef and compelling him by fear of bodily harm and loss of his job to rejoin the union, that when Bohachef quit work at 12:40 A.M., he zig zagged through the plant to avoid the union officers and members and finally met respondent, Imp, and with him left the plant at 1:00 A.M., outside of the gate they were met by a group of members and were followed by them to Imp's car, they entered the car and locked the doors, the union members attempted to open the doors, cursed at them and attempted to prevent them moving the car by one of them standing in front of it, Imp started the car slowly and the union member in front of it climbed on the bumper, Imp proceeded slowly until he was stopped by the car of the union member being driven in front of him, at which time the union member jumped off the car, which immediately turned around and proceeded directly to the police station followed by a car containing members of a union group, stones were thrown which shattered the rear window and scattered glass inside the car, as a result of said incident, petitioners verbally and in writing demanded the discharge of Imp and Bohachef on the ground that they were disrupters;

that it has long been the claim of petitioners that every employee who is not a member of good standing in the union is a disrupter subject to discharge at the request of the union, within the terms of the letter of the Allis-Chalmers Company (R. 126, No. 5); that Imp and Bohachef engaged in no labor union activity and did not attempt to undermine the activities of petitioners but that Bohachef, when threatened and intimidated on the company premises, forcefully expressed his reasons for not affiliating under present leadership of the union; that petitioners attempted to coerce and intimidate Imp and Bohachef by falsely and unreasonably charging them with a criminal offense in attempting to kill or to do great bodily harm to the union member who stood on the bumper of Imp's car during the incident above described; that they attempted to cause the Governor of Wisconsin to remove the District Attorney and appoint a successor who would prosecute Imp and Bohachef; that all of the activities directed at Imp and Bohachef were a part of a plan to compel all employees in the collective bargaining unit for which such union was exclusive bargaining representative to become and remain members of the union.

The Board made conclusions of law (R. 133): that petitioner union was guilty of unfair labor practices: 1. By threatening Bohachef with bodily harm, and Imp and Bohachef with the loss of their jobs, by assaulting them while in their automobile, by falsely accusing them of criminal offenses in order to coerce and intimidate them in the enjoyment of their legal right to select bargaining representatives or to refrain from any or all concerted activities for collective bargaining; 2. by attempting to induce the employer to interfere with Imp and Bohachef by discharge or discipline and thus to interfere with their right to select bargaining representatives free from any interference.

The Board ordered petitioners to cease and desist: A. From attempting to coerce or intimidate Imp and Bohachef or any of the employees of the Allis-Chalmers Co. in the enjoyment of the legal rights to select bargaining representatives to form, join or assist labor organizations or to engage lawful concerted activities for collective bargaining or to refrain from such activity by threatening Imp and Bohachef or any of the employees at the Allis-Chalmers Co. with bodily harm or loss of their jobs, by assaulting them, by falsely accusing them of criminal offenses, by continuous solicitation of membership or by any other manner or in any other way. B. Attempting to coerce, intimidate or induce Allis-Chalmers Manufacturing Company to interfere with Imp and Bohachef in their legal right of self organization to bargain collectively and to engage in lawful concerted activities for collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities. And the Board ordered affirmative action: Post notices that no employee is required by law or any collective bargaining agreement to become or remain a member of petitioner union in order to retain his employment, that employees of the company are guaranteed by law the right to choose such bargaining representatives as they see fit and are guaranteed the right to refrain from any collective bargaining activities; that petitioner union will refrain from attempting to interfere with the right of the individual employees of the company, will not coerce or intimidate by threat or bodily harm, loss of his job or in any other manner in order to compel such employees against their will to join or assist petitioner union and will refrain from attempting to coerce, intimidate or induce Allis-Chalmers Manufacturing Company to interfere with any of its employees to associate with a labor organization or to refrain from such association and will not demand the discharge of employees for failing to join or to maintain membership in such union or engaging in union ac-

tivity off the premises of the employer or for joining or assisting any other labor organization.

The trial court sustained, confirmed and ordered enforced the order of respondent Board (R. 137) and modified it to the effect (1) that appellants cease and desist from: A. Attempting to coerce or intimidate any of the employees of the Allis-Chalmers Company either by continuous solicitation if objected to, or by assaults or threats of bodily harm or loss of their job, or by false accusations of criminal offenses or by any other manner or in any other way (R. 138) B. Attempting to coerce, intimidate or induce Allis-Chalmers Company to interfere with plaintiffs in the enjoyment or exercise of their rights and activities or to refrain from such activities. (2) Take affirmative action as follows: A. Post notices that no employee is required by law or by any collective bargaining agreement to become or remain or not to become or remain a member of petitioner union or any other organization in order to retain employment, that petitioner union will refrain from interfering with the rights of individual employees and will not coerce or intimidate any employees of the company by threat of bodily harm, loss of his job, or in any other manner in order to compel them against their will to join or assist petitioner union; and that petitioner union will refrain from attempting to coerce, intimidate or induce the company to interfere with any of its employees in their legal right to associate with labor organizations or refrain from such organization and will not demand the discharge of employees for failing to join or maintain membership in petitioner union or engaging in any union activity off the premises of the company or for joining and assisting any labor organization (R. 138). The judgment is in the same terms (R. 140 et seq.)

The Supreme Court of Wisconsin affirmed the judgment without modification (Opinion end of record).

QUESTIONS PRESENTED

The case presents the question whether a state may by a labor relations act create a right to abstain from all the concerted activities provided for in the National Labor Relations Act and by the interpretation of this right prevent the exercise of the rights guaranteed in Section 7 of the National Act.

The case also presents the question whether a state may, by means of an onerous provision in its statute, prevent the efforts of a labor organization, which was established as the sole bargaining representative for all the production workers (with a few exceptions) by the National Labor Relations Board of an employer admittedly engaged in an interstate commerce, to obtain a closed shop by demanding the discharge of those employees who refuse to join the union where such provision in the state law is contrary to the provisions to the National Labor Relations Act.

The case also presents the question whether a state may prevent solicitation of membership by members of a labor organization because such solicitation infringes upon the right established by the State Act of refraining from all collective labor activities.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

The Supreme Court of the State of Wisconsin has decided a federal question in a way in conflict with an applicable federal statute and with the applicable decisions of this Court:

National Labor Relations Act, 49 Stats. 452, Sections 1 and 7, 29 U. S. C. 151, 157.

National Labor Relations Board vs. Jones & Laughlin S. Corp., 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893, 108 A.L.R. 1352.

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A. F. L. vs. Swing, 312 U. S. 321.

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Wisconsin Statutes 1941
Section 111.02(1)
Section 111.04
Section 111.06(c)
Section 111.06(2)(a)(b)
Section 111.06(3)

Wherefore, it is respectfully prayed that a writ of certiorari be issued out of, and under the seal of, this Honorable Court directed to the Supreme Court of the State of Wisconsin commanding that Court to certify and send to this Court for its review and determination the full and complete transcript of the record and all proceedings in the case at bar, and that the judgment of the said Supreme Court of the State of Wisconsin may be reversed by this Honorable Court, or the case ordered dismissed, and that your petitioner may have such other and further relief in the premises as this Honorable Court may deem just and proper, and your petitioners will ever pray.

Harold Christoffel and
Allis-Chalmers Workers Union, Local 248,
United Automobile Workers of America, C.I.O.
Petitioners.

A. W. RICHTER,
Counsel for Petitioners.